

Ready-to-heat meals that are not prepared for immediate consumption and are sold from a facility without an on-premises dining area are taxed at the lower rate. See 86 Ill. Adm. Code 130.310(a). (This is a GIL).

August 6, 2004

Dear Xxxxx:

This letter is in response to your letter dated March 15, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a new business serving freshly-made, family style, and ready to heat meals. Since we've opened, we've been charging 8.75% sales tax. However, we have recently learned that we should be eligible for the lower tax rate of 2% due to the following reasons:

1. Our food, which is ready to heat, is not available for immediate consumption.
2. There are no facilities for eating the meals on the premises.
3. The meals are greater than single serving

We also have gift items and a few ready to eat items (such as salads and cookies) that we understand should be taxed at the higher rate.

Could you please advise us as to the correct tax rate we should charge?

Thank you for your assistance.

DEPARTMENT'S RESPONSE

For general information purposes food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate

consumption), the tax imposed is at the lower rate of 1% plus local taxes if any. See 86 Ill. Adm. Code 130.310(a).

Gross receipts from sales of food for which facilities are provided so that it can be consumed on the premises where it is sold and gross receipts from sales of food which has been prepared for immediate consumption do not qualify for the reduced rate. For example:

- A) Gross receipts from sales of food and drinks by restaurants, coffee shops, cafeterias and other establishments selling food which has been prepared for immediate consumption or which provide facilities for on-premises consumption are subject to the full rate of tax.
- B) Concession stands, snack shops and other establishments which sell food items primarily (more than 50%) in individual sized servings (such as ice cream cones, bags of popcorn, and individually served sandwiches) make sales of food for immediate consumption.
- C) Sales of all hot food and hot food products are sales of food for immediate consumption. See 86 Ill. Adm. Code 130.310(b)(2).

Delicatessens, markets, dairies and bakeries and other establishments which sell food items primarily (more than 50%) in quantities greater than individual sized servings incur the reduced rate on gross receipts from retail sales of food items. See 86 Ill. Adm. Code 130.310(3).

The reduced rate does not apply to alcoholic beverages, nor soft drinks. The term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products, or drinks containing 50% or more natural fruit or vegetable juice. Frozen concentrated fruit juice, dry powdered drink mixes, and fruit juices which are reconstituted to natural strength are not soft drinks. See 86 Ill. Adm. Code 130.310(b)(4) and (b)(5).

Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. Retailers who sell food which they do not prepare in any way, are not selling food for immediate consumption, i.e., pre-packaged candy bars, snacks, chips, ice cream. It is presumed that retailers who sell food prepared for immediate consumption in individual single-size servings will sell all such items for consumption without substantive delay. Thus, for example, a retailer of individual sandwiches, doughnuts or cookies prepared in the morning will be subject to the high rate of tax regardless of when during the business day such items are sold and actually consumed. See 86 Ill. Adm. Code 130.310(b)(6).

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate on all food sales (including bulk or grocery type items). However, if establishments sell both foods that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items only if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of recording and accounting for collection of receipts.

If establishments such as yours have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or

grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a).

It appears the ready to heat meals are not prepared for "immediate consumption" as defined by the current regulations. In situations in which there are no dining facilities and over 50% of the sales are of food that is not prepared for immediate consumption, the low rate would generally apply. However, any foods prepared for immediate consumption (cookies, individual salads made at a salad bar, for instance), as well as soft drinks and alcoholic beverages, would be taxed at the high rate.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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